

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 263 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

THAKKER RAJENDRAKUMAR

GHANSHYAMBHAI

Versus

MULSHANKER HANSRAJ JHALA

Appearance:

1. Criminal Revision Application No. 263 of 2002
MR AR THACKER for Petitioner No. 1
RULE SERVED for Respondent No. 1-2
MR SS PATEL APP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 10/09/2003

ORAL JUDGEMENT

The petitioner above named has preferred this
revision application u/s.397 read with s.401 of the Code

of Criminal Procedure, 1973 (for short, "the Code") in order to challenge an order dated 06/04/02 recorded by the learned Sessions Judge, Kachchh at Bhuj, in Cr.R.A.No.71/2000 filed by the contesting respondents under which the learned Sessions Judge allowed the said revision application, set aside the order dated 10/11/2000 recorded by the learned Chief Judicial Magistrate at Bhuj in Criminal Case No.18/1998 and directed that the contesting respondents herein be discharged from offences punishable u/s.406, 420 read with s.34 of IPC.

2. It appears from the record that the petitioner had filed a private complaint before the learned Chief Judicial Magistrate at Bhuj stating that the petitioner had agreed to purchase a property from the contesting respondents and had made part payment also, for the said purchase; that, thereafter, the respondents did not execute a sale deed and did not return the amount in question. It was also alleged that the petitioner was induced to pay the amount of consideration and thereafter, the petitioner has been cheated by the contesting respondents, by not executing a sale deed. Therefore, complaint was filed, which was referred to the concerned police station for investigation u/s.156(3) of the said Code. After investigation, the investigating police officer submitted chargesheet against the contesting respondents. Thereafter, the contesting respondents submitted an application, Ex.4, before the trial court stating that no offence was made out and therefore, the contesting respondents be discharged.

3. After hearing the parties, the learned Chief Judicial Magistrate dismissed the said application by order dated 10/11/2000. Feeling aggrieved by the said order of the trial court, the contesting respondents preferred Cr.R.A.No.71/2000. The learned Sessions Judge heard the parties and found that since a civil suit was filed and since it was pending, there was a civil dispute between the parties and therefore, criminal complaint could not proceed ahead. Ultimately, the Sessions Court allowed the said revision application and directed the discharge of the contesting respondents from the aforesaid offences.

4. Feeling aggrieved by the said order of the learned Sessions Judge, the petitioner, original complainant, has preferred this revision application before this Court, mainly stating that, simply because a civil litigation is pending, criminal complaint or chargesheet case cannot be thrown away and the accused

persons cannot be discharged. It is also contended that the petitioner ought to have been given an opportunity to lead evidence, to show that ingredients of the aforesaid offence are present and therefore, the judgment and order of the trial court, discharging the contesting respondents, are illegal and perverse and deserve to be set aside.

5. On receipt of the revision application, Rule was issued and it was duly served. However, the contesting respondents have found it proper, not to appear before the Court to defend their case. I have heard the learned advocate for the petitioner and the learned APP for the State. Incidentally, the learned APP has supported the arguments advanced by the learned advocate for the petitioner.

6. It is not much in dispute that the contesting respondents agreed to sell their property to the petitioner under a written agreement to sell. It is also not in dispute that the contesting respondents did not execute a sale deed in favour of the petitioner. The petitioner has alleged in the complaint that he was induced to part with the amount of consideration and ultimately, the sale deed was not effected and therefore, he was cheated. This is a question of fact which can be dealt with and decided by the Court concerned, after appreciation of evidence, which may be produced before it by the parties.

7. A question had arisen as to whether a criminal complaint or a chargesheet case can proceed ahead, when a civil suit is pending. The learned Sessions Judge had considered a decision in the case of Trilok Singh and ors. V/s. Satyadeve Tripathi reported in AIR 1979 SC 850. This matter related to Hire Purchase Agreement and ordinarily, in a hire purchase agreement, there is a specific averment that the hirer would keep the property in possession as hirer only. He would become a purchaser only on making full payment of the amount of consideration and till then, the title does not pass and he does not become the proprietor or the owner of the property in question.

8. We may also consider a decision in the case of Kamaladevi Agarwal V/s. State of West Bengal reported in (2002) 1 SCC 555. There it has been observed by the hon'ble the Supreme Court that a criminal proceeding should not be quashed, merely because of pendency of a civil proceeding between the parties, even if it is pending in a higher Court.

9. Similar view was adopted in the case of Vitoori Pradeep Kumar V/s. Kaisula Dharmaiah and Ors. reported in (2002) 9 SCC 581. The decisions of the hon'ble the Supreme Court as above clearly go to show that mere pendency of a civil suit, will not bar a criminal proceeding. It is required to be considered that even when there is a criminal dispute, there may be simultaneous civil disputes also, particularly when there may be a commercial transaction. The party concerned has to file a civil suit within the limitation provided for the purpose of enforcing the civil right. Simply because the said party has opted to file a civil suit, it would not be a bar to a criminal proceeding. Therefore, merely because the petitioner had filed a civil suit for a specific purpose, it cannot be said that there is no criminal dispute between the parties.

10. On the other hand, it has been specifically alleged in the complaint that the petitioner was induced to part with payment of consideration and thereafter, he was cheated. This would be a subject matter of dispute and it can be resolved, by permitting the parties to lead evidence.

11. It cannot be said that no criminal offence has been made out. It is more so when the investigating police officer undertook investigation and at the end of investigation, chargesheet has also been filed. In that view of the matter, it cannot be said that no offence is made out.

12. In that view of the matter, the contesting respondents could not be discharged by the Sessions Court. To that extent, the judgment and order of the Sessions Court appear to be illegal and therefore, it is necessary to interfere with the said order in exercise of revisional jurisdiction.

13. For the foregoing reasons, this revision application is allowed. The judgment and discharge order recorded by the Sessions Court and impugned in this revision application are set aside. The criminal case before the Magisterial Court is restored and the trial court will proceed ahead with the trial of the said criminal case in accordance with law. Rule is made absolute to the above extent.

(D. P. Buch, J.)

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